

Appl. No. 10/716,926
Amdt. Dated June 11, 2008
Reply to Office Action of April 11, 2008

REMARKS

This is a full and timely response to the Final Office Action mailed April 11, 2007. Reexamination and reconsideration in view of the foregoing amendments and following remarks is respectfully solicited. This response is filed within two months of the date of the Final Office Action.

Claims 1, 3-20 are pending in this application, with claims 1, 10 and 17 being the independent claims. Claims 1 and 10 have been amended to make a minor correction for clarity.

Rejections Under 35 U.S.C. § 103

Claims 1, and 3-20 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Salvo et al (U.S. Patent No. 6,341,271, hereinafter Salvo). The Examiner stated that Salvo teaches an inventory replenishment system that comprises a plurality of bin monitors, where each of the plurality of bin monitors includes a sensor and a transmitter. The Examiner stated that Salvo teaches that other methods can be used to determine the amount of inventory, but admitted that Salvo does not teach monitoring for when a reserve bin is accessed to replenish a primary bin. Furthermore, in response to Applicants' previous argument that Salvo failed to teach a combination of primary bin coupled to a reserve bin, the Examiner disagreed, stating that Salvo discloses storage areas clearly understood as "reserve inventory", which have not been used or moved into receptacles 104.

Furthermore, the Examiner argued that as Salvo teaches other methods to determine the amount of inventory, that it would have been obvious to one of ordinary skill in the art to modify Salvo to include a reserve receptacle in communication with each receptacle because doing so would allow for immediate replenishment of the inventory when the inventory in the receptacle has depleted. Furthermore, the Examiner argued that the claimed invention would have been obvious under KSR, which is alleged to foreclose an argument that a specific teaching, suggestion or motivation is required to support a finding of obviousness.

Finally, in response to applicant's argument that Salvo teaches monitoring an amount, which is just an indication of quantity, the Examiner again argued that this is an

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obvious modification of providing signals indicative of an inventory amount, as both features are used to indicate inventory levels and a need for replenishment of inventory. The Examiner argued that their functionalities are similar, and that the modification would also have thus been obvious to one of ordinary skill in the art because doing so would provide notification that the inventory in the receptacle has depleted. And again, the Examiner argued that the claimed invention would have been obvious under KSR, stating that KSR forecloses an argument that a specific teaching, suggestion or motivation is required to support a finding of obviousness.

Applicants again respectfully disagree. Regarding the issue of a reserve bin, applicants note that while Salvo describes a variety of different types of receptacles (see column 4, lines 12-22) nowhere are any of these various types of receptacles described as being a "reserve receptacle" that is coupled a "primary receptacle". Stated another way, there is no description in Salvo of two bins storing same thing, such that one serves as a reserve for the other. Instead, all the descriptions imply that each receptacle operates independently of any other receptacles, and that inventory amounts are likewise independent.

Furthermore, Salvo itself teaches against such an arrangement, stating that "the shape and material of each receptacle may differ and do not effect the operation of the inventory management system 100". See column 4, 15-18 of Salvo. Thus, Salvo effectively ignores the configuration of the receptacles, and does not contemplate any sort reserve/primary bin configuration.

Regarding the issue monitoring for an event (replenishment) rather than providing signals indicative of amount, applicants again disagree with the conclusions of the Examiner. While both features may be used to indicate a potential need for further replenishment, the techniques used are completely different. In the Salvo method, the sensors provide signals of amount. Salvo describes these sensors with examples such as level sensors, weight indicators, and other devices that permit "determination of the amount 151 of the inventory in a receptacle 104". See column 4, line 32-46. All of these things are detections of quantity.

Applicants submit that it is fundamentally different to attempt to quantify an

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amount of some item rather than to simply monitor when a reserve bin has been accessed. Methods of monitoring for quantity can require a great level of complexity depending upon the item being monitored, and are thus subject to a variety of possible failure modes. In contrast, monitoring for a transfer is relatively simple, and can be reliably determined with high precision. Thus, while the purposes may be similar, the techniques are so different as to foreclose a finding of obviousness without some further rationale.

Regarding the Application of KSR, KSR itself states that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness". KSR Int'l Co. v. Teleflex Inc., 82 USPQ2D 1385, 1396 (2007). Furthermore, the recently published Examination Guidelines for Determining Obviousness Under 35 U.S.C. § 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc., describes the possible rationales and their requirements. See section III of the Examination Guidelines, Federal Register, Volume 72, No. 195 at page 57529. In this case, the Examiner has made no showing that meets the requirements of section III of the Examination Guidelines. Instead, the Examiner bases an assertion of advantage that apparently relies solely on hindsight and applicants' own teachings. Furthermore, the citation to Ex parte Smith is incorrect, as the above cites make clear.

Thus, as Salvo fails to teach both "inventory storage devices" that include "a primary bin coupled to a reserve bin" and bin monitors that monitor "for when a reserve bin is accessed to replenish a primary bin", and as no proper "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" has been provided, applicants submit independent claim 1 is patentably distinct over the Salvo reference. Furthermore, as independent claims 10 and 17 include similar limitations, they are submitted to be patentably distinct over Salvo for the same reasons. Furthermore, as claims 2-9, 11-16 and 17-20 depend from, and include all the limitations of their respective independent claims, they are also submitted to be patentably distinct for the same reasons.

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Conclusion

Based on the above, independent claims 1, 10 and 17 are patentable over the citations of record. The dependent claims are also deemed patentable for the reasons given above with respect to the independent claims and because each recite features which are patentable in its own right. Individual consideration of the dependent claims is respectfully solicited.

The other art of record is also not understood to disclose or suggest the inventive concept of the present invention as defined by the claims.

Hence, Applicant submits that the present application is in condition for allowance. Favorable reconsideration and withdrawal of the objections and rejections set forth in the above-noted Office Action, and an early Notice of Allowance are requested.

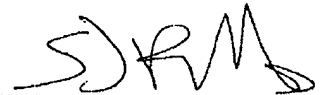
If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

If for some reason Applicant has not paid a sufficient fee for this response, please consider this as authorization to charge Ingrassia, Fisher & Lorenz, Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

INGRASSIA FISHER & LORENZ

Dated: June 11, 2008

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